

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1509 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

YUSUFBHAI KASIM CHHIPA

Versus

KESHAVALAL CHHOTALAL MODI

Appearance:

MR RN SHAH for Petitioner

MR A.V.TRIVEDI FOR MR AC GANDHI for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3, 4, 5

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/02/2000

ORAL JUDGEMENT

#. The petitioner herein is the original defendant no.1 against whom as well as against respondents nos 2 to 5 herein the respondent no.1-plaintiff had filed HRP Suit

No.2294 of 1975 in the court of Small Causes at Ahmedabad for getting decree for possession of the suit premises.

#. The case of the plaintiff in the suit was that the plaintiff is the owner of the property bearing survey no.5419-2 and M.C.No.4004 situated in Jamalpur Ward I-B, opposite Nagari's Bungalow, Rang Bazar, Astodia Road, Ahmedabad. The father of the defendant no 1 to 3 deceased Kasamji Allauddin Chhipa had taken the suit premises at a monthly rent of Rs. 20/inclusive of taxes. That the defendant no.1 was doing business with his deceased father by helping him in his business of cycle repairing work. After the death of the said Kasamji Allauddin Chhipa, defendant no.1 alone is in possession of the suit premises and the defendants nos 2 and 3 were joined as parties in the suit to obviate any technical hitch. According to the plaintiff, defendant no.1 is in arrears of rent from 1.4.74. The plaintiff also pleaded the case of bonafide requirement for the purpose of establishing his own business. It is also the case of the plaintiff that the defendant no.1 has sub let the suit property to defendants nos 1 to 4 and subsequently to defendant no.5 and accordingly defendants no.4 and 5 were also joined as defendants in the suit. The plaintiff also gave a notice before filing the suit to the defendants but the defendants having failed to comply with the same, ultimately the plaintiff filed the aforesaid suit for possession on the aforesaid grounds.

#. Defendants nos 1 to 3 appeared in the suit and filed their written statement exh.14. Though the dispute about standard rent was taken, they denied that they are in arrears of rent. The defendant also denied the bonafide requirement of the suit premises by the plaintiff. Defendant no.4 did not appear in the suit and therefore, the suit was ordered to be proceeded ex-parte against him. Defendant no.5 appeared in the suit and filed his written statement exh.48. He denied that the suit premises was sub let to him.

#. The Trial Court framed various issues at exh.14 and after hearing the arguments of both the sides and considering the oral and documentary evidence on record ultimately decreed the suit of the plaintiff on the ground of sub-letting as well as on the ground of bonafide requirement. The Trial Court also fixed the standard rent at Rs.20/- p.m.

#. Aforesaid decree of the Trial Court was challenged by the present petitioner who was the original defendant no.1 in the suit by way of filing Civil Appeal No.369 of

1979 before the Appellate Bench of the Court of the Small Causes and said appeal was dismissed by the Appellate Bench of the Court of Small Causes, Ahmedabad by its judgment and order dated 30.8.,83.

#. Present Revision Application has been filed by original defendant no.1 challenging the decree of the Appellate Bench of the Court of Small Causes.

#. At the time of hearing of this revision application Mr. Shah has argued that in the facts and circumstances of the case, decree for possession could not have been passed on the ground of sub-letting as well as on the ground of bonafide requirement of the plaintiff. Mr. A.V.Trivedi learned advocate for the respondent no.1 has supported the judgment and decree of the Appellate Bench. The Appellate Bench has observed in paras 12 to 15 of its judgment that looking to the evidence on record it is a clear case of sub letting. The Appellate Bench has given detailed reasoning for confirming the decree on the ground of subletting.

#. The defendant no.1 who was found to be carrying on business after the death of his father was examined at exh. 102 . he has deposed that Sandeep Tyre Works and other business are his own business. However, in cross examination he has admitted that he has no books of accounts to show that he is doing the tyre business or colour business. He has also admitted that he has no licence from the Corporation for the said business. He has not produced any evidence to show that he was running the business in the suit premises. Defendant no.5 in his cross examination has admitted that he is the near relative of defendant no.1 and that his eldest son Yashinbhai is sitting on the pan galla and is paid Rs. 150/- as salary. But no evidence is produced to show such payment. Defendant no.1 has not stated anything regarding engaging said Yashinbhai i.e. son of defendant no.5 at a salary of Rs. 150/- for sitting at the pan galla. On appreciation of evidence it has been found by the Appellate Bench that the aforesaid circumstance would be sufficient to show that defendant no.5 has come to oblige the defendant no.1 who is his near relative and that as per the Commissioner's report said Yashinbhai was found to be sitting on the aforesaid pan galla for doing pan galla business. Considering the evidence on record it has been found by both the courts below that the defendant no.1 has sub let the suit premises. It cannot

be said that the judgment of the Appellate Bench suffers from any infirmity or error of law and this court while exercising the revisional jurisdiction cannot reappreciate the evidence on record. In that view of the matter since both the courts below have appreciated the evidence on record and have reached to the correct conclusion and said conclusion is based on the appreciation of evidence on record. Same is not required to be disturbed by this Court while exercising revisional jurisdiction. Therefore, the submission of the petitioner that there is no subletting cannot be accepted and said contention is accordingly rejected.

#. Another ground on which the decree was passed was the bonafide requirement of the plaintiff. The Appellate Bench has considered the aforesaid aspect in para 16 of its judgment. Considering the evidence of the plaintiff it was found that he genuinely requiring the premises for his own business. It has been considered by the Appellate Bench that the defendant no.1 is doing his own tailoring business at his residence and the defendant no.3 is also doing his tailoring business and defendant no.2 is doing part time work. It was therefore, found that no hardship would be caused to defendants nos 1 to 3 in case the decree of eviction is passed on the ground of bonafide requirement. The decree on the ground of bonafide requirement is passed essentially on appreciation of evidence on record and said finding would be purely within the realm of appreciation of evidence and therefore, said finding also cannot be disturbed by this court in revisional jurisdiction and accordingly aforesaid finding of fact is required to be confirmed in this revision application.

##. It was then argued that the suit was not maintainable as all the heirs of deceased tenant were not made parties and that on the death of original defendant tenant Kasambhai. Section 5(11)(c) of the Bombay Rent Act comes into operation and question of transmission of tenancy is required to be decided before any proceedings are taken in the court of law. It is not in dispute that the premises in question is a business premises and as per section 5(11)(c) of the Rent Act only those members of the tenant's family who were carrying on business with the tenant in the suit premises at the time of his death may continue to occupy the suit premises and only such heirs are entitled to claim right under the aforesaid section. In the present case it is nowhere stated that other heirs of tenant were carrying on business at the time of his death. On the contrary the defendant nol has stated in para 4 of his evidence that neither defendant

no.3 nor defendant no.2 or his sister or brother were doing any business during the life time of his deceased father. The Appellate Bench has considered the aforesaid aspect in para 19 of its judgment. Therefore, there is no substance in this argument also. Since I find no substance in the arguments of Mr. Shah this revision application is required to be dismissed and accordingly the same is dismissed. Rule is discharged. Interim relief granted earlier stands vacated. No order as to costs.

##. At this stage Mr. Shah requests that he may be given some time for approaching the Apex Court. The interim relief granted by this court earlier at the time of admitting this matter is continued upto 30.6.2000. In the meanwhile, the petitioner is directed not to transfer, alienate or part with the possession of the property in any manner whatsoever.

(P.B.Majmudar.J)

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